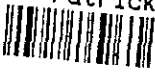


1 RECORDING REQUESTED BY:
2 CITY OF EMERYVILLE

3 WHEN RECORDED MAIL TO:

4 DEPARTMENT OF TOXIC
5 SUBSTANCES CONTROL
6 700 HEINZ AVENUE, SUITE 200
7 BERKELEY, CALIFORNIA 94710
8 ATTN: BARBARA J. COOK, P.E.

Recorded in Official Records of Alameda Co.
Patrick O'Connell, Clerk-Recorder



No Fee

98103393 08:53am 03/27/98

005 28054914 28 10
A23 27 7.00 78.00 0.00 0.00 0.00 0.00 0.00
0.00

27
R

SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT
TO RESTRICT USE OF PROPERTY

Shellmound Property
Shellmound Street, Emeryville

This Covenant and Agreement ("Covenant") is made on the
24 day of March, 1998 by the City of Emeryville
Redevelopment Agency ("Covenantor"), who is the owner of
record of certain property situated in Emeryville, County of
Alameda, State of California, and by the Department of Toxic
Substances Control (the "Department"). The property which
is the subject of this Covenant is the outlined area of the
parcel described in the Legal Description in Exhibit "A" and
as shown on the Site Plan in Exhibit "B", also known as
Assessor Parcel Numbers 049-1516-004-4, 049-1516-006-5,
049-1516-007-5, 049-1516-006-2, and 049-1516-007-2 (the
"Property"). Exhibit "A" and Exhibit "B" are attached
hereto and incorporated herein by this reference. Covenantor
and Department entered into a Voluntary Cleanup Agreement
pursuant to California Health and Safety Code Section

1 25355(b) and 25355.5(a)(1)(C) in November 1993. Covenantor
2 and the Department desire and intend that in order to
3 protect the present and future public health and safety, the
4 Property shall be used in such a manner as to avoid
5 potential harm to persons or property which may result from
6 hazardous substances which have been deposited on the
7 Property.

8 ARTICLE I

9 STATEMENT OF FACTS

10 1.01 Description of contamination. The Property is
11 approximately 7.5 acres and is located between Interstate 80
12 and Shellmound Street, and south of Powell Street in the
13 City of Emeryville, Alameda County. The Property is
14 formerly part of a larger parcel containing the Judson
15 Manufacturing Company, originally known as Judson Iron
16 Works. The Property is in a former tideland area which was
17 filled to accommodate the construction of Interstate 80
18 during the 1950's. Fill matter consisted of process waste
19 (slag and mill scale) from Judson Manufacturing Company.
20 Chemicals of concern in soils include beryllium, total
21 chromium, lead, arsenic and polychlorinated biphenyls
22 (PCBs). Chemicals of concern in groundwater include metals
23 (e.g. arsenic, lead, etc.), volatile organic compounds (e.g.
24 benzene, trichloroethylene, etc.) and semi-volatile organic
25 compounds (e.g. pyrene, total phthalates, etc.).

26 The City of Emeryville has adopted a Mitigated Negative
27 Declaration for the Property, in connection with a proposal

1 to construct a commercial hotel, four one story
2 commercial/office structures, and surface parking on a
3 portion of the Property.
4

5 1.02 Health Effects. According to the Human Health
6 Risk Assessment prepared by SOMA Environmental Engineering,
7 Inc. and approved by the Department on August 26, 1997, the
8 potential routes of exposure to these contaminants are
9 through incidental ingestion of surface soil, dermal contact
10 with soil, inhalation of dust from surface soil, and
11 inhalation of volatile chemicals from groundwater. The
12 potential human health effects resulting from exposure to
13 these contaminants are as described in the U.S. Department
14 of Health & Human Services, Public Health Service, Agency
15 for Toxic Substances and Disease Registry, individual
16 Toxicological Profiles.

17 1.03 Surrounding Land Use. The Property is located in
18 an area of industrial/commercial land use. Temescal Creek,
19 a concrete lined channel, bisects the Property from the
20 mid-east side of the Property to the mid-west side of the
21 Property. To the south of the Property is Barbary Coast
22 Steel (formerly Judson Manufacturing Company), Powell Street
23 Plaza (formerly P.I.E. Nationwide Trucking) is to the north,
24 Interstate 80 is to the west, and Myers Container
25 Corporation and Harcross Pigments (formerly Pfizer Pigments)
26 are to the east. Shellmound Street, as reconfigured in
27 1994, bisects the Property diagonally from the northeast
side of the Property to the southwest side of the Property.

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ARTICLE II
GENERAL PROVISIONS

2.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, and bind the respective successors in interest of thereof. Each and all of the Restrictions are imposed upon the Property (as described in Exhibit "A" and shown in Exhibit "B"), unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Health and Safety Code Sections 25355.5 and 25356.1 and run with the land pursuant to Health and Safety Code Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

2.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, assignees, agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of

1 future Owners and Occupants and that their interest in the
2 Property shall be subject to the Restrictions contained
3 herein.
4

5 2.03 Incorporation into Deeds and Leases. Covenantor
6 desires and covenants that the Restrictions set out herein
7 shall be incorporated by reference in each and all deeds and
8 leases of any portion of the Property.

9
10 ARTICLE III

11 DEFINITIONS

12 3.01 Department. "Department" shall mean the
13 California Department of Toxic Substances Control and shall
14 include its successor agencies, if any.
15

16 3.02 Improvements. "Improvements" shall mean all
17 buildings, roads, driveways, regrading, landscaped and paved
18 parking areas, constructed or placed upon any portion of the
19 Property.

20 3.03 Occupant(s). "Occupant(s)" shall mean those
21 persons entitled by ownership, leasehold, or other legal
22 relationship to the exclusive right to occupy any portion of
23 the Property.

24 3.04 Owner(s). "Owner(s)" shall mean the Covenantor
25 or its successors in interest, including heirs and assigns,
26 who hold fee title to all or any portion of the Property.
27

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

shall restrict the use of the Property as described in said Exhibit A as follows:

- a. Property shall be restricted to the uses provided for in Section 1.01 and other commercial/office or industrial uses.
- b. Residential development for human habitation shall not be permitted on the Property, except for the hotel project as provided in the Disposition and Development Agreement dated August 20, 1997, by and between Covenantor and the Emeryville South Bayfront Redevelopment Project Partnership.
- c. Hospitals or health clinics shall not be permitted on the Property.
- d. Schools for children under 21 years of age shall not be permitted on the Property.
- e. No drilling for drinking water shall be permitted on the Property.
- f. No raising of food (e.g., livestock, food crops, etc.) shall be permitted on the Property.

- 1 g. Subdivision of the Property is forbidden except: (i) as
2 allowed under Health and Safety Code Section 25232
3 (a) (2) and (b) (2) notwithstanding that the Property is
4 not and has not been designated as a hazardous waste
5 property is not and has not been designated as a
6 hazardous waste property or a border zone property
7 pursuant to Health and Safety Code Sections 25220 et.
8 seq.; (ii) as required for Covenantor to convey that
9 portion of the Property west of the reconfigured
10 Shellmound Street, known as Assessor Parcel Numbers
11 049-1516-004-4, 049-1516-006-5 and 049-1516-007-5 shown
12 on the Site Plan in Exhibit "C" (the "DDA Site"),
13 pursuant to the terms of that certain Disposition and
14 Development Agreement dated August 20, 1997, by and
15 between Covenantor and the Emeryville South Bayfront
16 Redevelopment Project Partnership (the "DDA"); (iii) as
17 contemplated in the aforementioned DDA for subdivision
18 of the DDA Site into parcels necessary for their
19 redevelopment; (iv) as required for Covenantor to
20 convey that portion of the Property east of the
21 reconfigured Shellmound Street, known as Assessor
22 Parcel Numbers 049-1516-006-2 and 049-1516-007-2 shown
23 on the Site Plan in Exhibit "D" (the "Future DDA
24 Site"), pursuant to the terms of an yet undetermined
25 agreement between Covenantor and some third party
26 necessary for the redevelopment of the Future DDA Site.
27 h. No activities which will disturb the soil (e.g.,
excavation, grading, removal, trenching, filling, earth

1 movement, or mining) shall be permitted on the Property
2 without the Department's prior written approval of a
3 Soil Management Plan.
4

5 i. Any contaminated soils brought to the surface by
6 grading, excavating, trenching or backfilling shall be
7 managed in accordance with all applicable provisions of
8 the state and federal laws and regulations.

9
10 j. The Owner(s)/Occupant(s) shall not conduct any
11 activities on the Property which may cause a potential
12 threat to public health and the environment.

13 k. Prior to sale, lease, or rental, the Owner(s) shall
14 give written notice to purchasers, lessee, and tenants
15 stating that there is residual contamination specified
16 in Health and Safety Code Section 25359.7(a).
17

18 4.02 Conveyance of Property. The Owner(s) shall
19 provide a thirty (30) days advance notice to the Department
20 of any sale, lease or other conveyance of the Property or an
21 interest in the Property to a third person. Notwithstanding
22 the foregoing, Owner shall have no obligation to provide
23 said advance notice to the Department with respect to
24 changes in the composition of the Owner's legal structure if
25 Owner is a corporation, partnership, limited partnership or
26 limited liability company or by reason of Owner obtaining
27 financing or re-financing for the Property. However, Owner
shall provide the Department notice of changes in Owner's

1 legal structure within thirty (30) days after such changes
2 go into effect.
3

4 4.03 Enforcement. Failure of the Owner(s) or
5 occupants to comply with any of the requirements, as set
6 forth in Section 4.01, shall be grounds for the Department,
7 by reason of the Covenant, to require that the Owner(s) or
8 occupants modify or remove any improvements constructed in
9 violation of Section 4.01. Violation of the Covenant shall
10 be grounds for the Department to file civil and criminal
11 actions against the Owner(s) or occupants as provided by
12 law.

13 4.04 Notice in Agreements. All Owners and occupants
14 shall execute a written instrument which shall accompany all
15 purchase, lease, sublease, or rental agreements relating to
16 the Property. The instrument shall contain the following
17 statement:

18 "The land described herein contains hazardous
19 substances. Such condition renders the land and the
20 owner, lessee, or other possessor of the land subject
21 to requirements, restrictions, provisions, and
22 liabilities contained in Chapter 6.5 and Chapter 6.8 of
23 Division 20 of the Health and Safety Code. This
24 statement is not a declaration that a hazard exists on
25 this Property."
26

27 4.05 Effect of Sale. Upon the sale of the Property or

1 a portion of the Property by Owner to a third person in
2 accordance with the terms of this Covenant, Owner shall
3 thereafter be relieved of all responsibility or liability
4 for adhering to or complying with the provisions, covenants,
5 restrictions and conditions of this Covenant as respects
6 that portion of the Property sold by Owner.

7
8 ARTICLE V

9 VARIANCE AND TERMINATION

10 5.01 Variance. Any Owner(s) or, with the Owner(s)'
11 written consent, any Occupant of the Property or any portion
12 thereof may apply to the Department for a written variance
13 from the provisions of this Covenant. Such application
14 shall be made in the same manner as provided in Health and
15 Safety Code Section 25233.

16
17 5.02 Termination. Any Owner(s) or, with the Owner's
18 (s') written consent, any Occupant of the Property or a
19 portion thereof may apply to the Department for a
20 termination of the Restrictions as they apply to all or any
21 portion of the Property. Such application shall be made in
22 the same manner as provided in Health and Safety Code
23 Section 25234.

24 5.03 Term. Unless modified or terminated in
25 accordance with Sections 5.01 or 5.02 above, by law or
26 otherwise, this Covenant shall continue in effect in
27 perpetuity.

ARTICLE VI
MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"
John Flores
Executive Director
City of Emeryville Redevelopment Agency
2200 Powell Street, 12th Floor
Emeryville, California 94808-1806

1 Copy to:

2 Department of Toxic Substances Control

3 700 Heinz Avenue, Suite 200

4 Berkeley, CA 94710

5 Attention: Barbara J. Cook, P.E., Chief

6 Site Mitigation Branch

7
8 6.03 Partial Invalidity. If any portion of the
9 Restrictions or terms set forth herein is determined to be
10 invalid for any reason, the remaining portion shall remain
11 in full force and effect as if such portion had not been
12 included herein.

13 6.04 Article Headings. Headings at the beginning of
14 each numbered article of this Covenant are solely for the
15 convenience of the parties and are not a part of the
16 Covenant.

17
18 6.05 Recordation. This instrument shall be executed
19 by the Covenantor and by the Site Mitigation Branch Chief,
20 California Department of Toxic Substances Control. This
21 instrument shall be recorded by the Covenantor in the County
22 of Alameda within ten (10) days of the date of execution.

23 6.06 References. All references to Code sections
24 include successor provisions.

1 IN WITNESS WHEREOF, the parties execute this Covenant as of
2 the date set forth above.
3

4 OWNER

5 City of Emeryville Redevelopment Agency
6

7
8 By: John A. Flores
9 John Flores
10 Executive Director

11 Date: 3-13-98
12

13
14 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
15

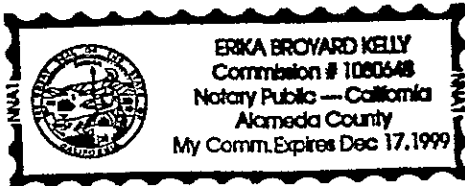
16
17 By: Barbara J. Cook
18 Barbara J. Cook, Chief
19 Site Mitigation Branch
20 Berkeley Office

21 Date: 3-24-98
22

23 APPROVED AS TO FORM:

24
25 Michael G. Biddle
26 Michael G. Biddle
27 Agency General Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CaliforniaCounty of AlamedaOn March 13, 1998 before me, Erika Broyard Kelly, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared John A. Flores
Name(s) of Signer(s)☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of PropertyDocument Date: March 13, 1998 Number of Pages: 13Signer(s) Other Than Named Above: Barbara Cook

Capacity(ies) Claimed by Signer(s)

Signer's Name: John A. Flores

- ☐ Individual
☒ Corporate Officer
 Title(s): Executive Director
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

 RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

City of Emeryville

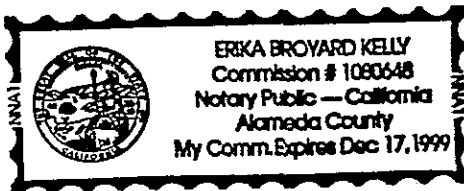
Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

 RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CaliforniaCounty of AlamedaOn March 24, 1998 before me, Erika Broyard Kelly, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Barbara Jean Cook
Name(s) of Signer(s)☐ personally known to me☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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Erika Broyard Kelly
Signature of Notary Public

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Capacity(ies) Claimed by Signer(s)

Signer's Name: Barbara Cook☐ Individual☒ Corporate OfficerTitle(s): Chief☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

Dept of Toxic
Substances Control

Signer's Name: _____

☐ Individual☐ Corporate Officer

Title(s): _____

☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

